

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ABBOTT DIABETES CARE, INC.,

Plaintiff,

v.

DEXCOM, INC.,

Defendants.

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) C.A. No. 05-590 GMS
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AMENDED SCHEDULING ORDER

This 3rd day of August 2006, the Court having conducted a Teleconference regarding amendment of the Court's scheduling order (dated March 10, 2006) on July 21, 2006, and the parties having determined after discussion that the matter cannot be resolved at this juncture by settlement, voluntary mediation or binding arbitration;

IT IS ORDERED that the scheduling order dated March 10, 2006 is amended as follows:

1. **Markman Claim Construction Hearing**. A *Markman* claim construction hearing shall be held on **May 14, 2007** at 9:30 a.m. The *Markman* hearing is scheduled for a total of **6** hours with each side having **3** hours. The parties shall meet and confer regarding narrowing and reducing the number of claim construction issues. On or before **February 28, 2007**, the parties shall submit a Final Joint Claim Chart which shall include citations to intrinsic evidence. The parties shall exchange opening claim construction briefs on **March 22, 2007**, and the answering claim construction briefs on **April 15, 2007**.

2. **Discovery**. All fact discovery in this case shall be initiated so that it will be completed on or before **January 31, 2007**. Expert Discovery in this case shall be initiated so that it will be

completed on or before **August 30, 2007**. Expert reports shall be served on or before **July 15, 2007**, and rebuttal expert reports shall be served on or before **July 30, 2007**.

a. **Discovery and Scheduling Matters:** Should counsel find they are unable to resolve a discovery or scheduling matter, the party seeking the relief shall contact chambers at (302) 573-6470 to schedule a telephone conference. Not less than forty-eight hours prior to the teleconference, the parties shall file with the court, via electronic means (CM/ECF), a **joint, non-argumentative** letter agenda not to exceed two (2) pages outlining the issue(s) in dispute. A sample letter can be located on this court's website at www.ded.uscourts.gov. Should the court find further briefing necessary upon conclusion of the telephone conference, unless otherwise directed, the party seeking relief shall file with the court a **TWO PAGE LETTER**, exclusive of exhibits, describing the issues in contention. The responding party shall file within five (5) days from the date of service of the opening letter an answering letter of no more than **TWO PAGES**. The party seeking relief may then file a reply letter of no more than **TWO PAGES** within three (3) days from the date of service of the answering letter.

3. **Confidential Information and Papers filed under Seal.** Should counsel find it will be necessary to apply to the court for a protective order specifying terms and conditions for the disclosure of confidential information, they should confer and attempt to reach an agreement on a proposed form of order and submit it to the court within ten (10) days from the date of this order. When filing papers under seal, counsel should deliver to the Clerk an original and two copies of the papers.

If after making a diligent effort the parties are unable to agree on the contents of the joint proposed protective order, then they shall follow the dispute resolution process outlined in paragraph 5(a).

4. **Settlement Conference.** Pursuant to 28 U.S.C. §636, this matter is referred to the United States Magistrate for the purpose of exploring the possibility of a settlement. If the parties agree that the possibility of settlement may be enhanced by such referral, the parties shall contact United States Magistrate Judge Thyng to schedule a settlement conference with counsel and the clients.

5. **Applications by Motion:** Except as provided in this Scheduling Order or for matters relating to scheduling, any application to the Court shall be by written motion filed, via electronic means (CM/ECF). Unless otherwise requested by the Court, counsel shall **not** deliver copies of papers or correspondence to Chambers.

6. **Oral Argument.** If the Court believes that oral argument is necessary, the Court will schedule a hearing Pursuant to District of Delaware Local Rule 7.1.4.

7. **Pretrial Conference.** On **October 1, 2007**, beginning at 9:30 a.m., the Court will hold a Pretrial Conference in Chambers with counsel. Unless otherwise ordered by the Court, the parties should assume that filing the Joint Pretrial Order (a sample form of Pretrial Order can be located on this court's website at www.ded.uscourts.gov satisfies the pretrial disclosure requirement in Federal Rule of Civil Procedure 26(a)(3). Thirty (30) days before the Joint Proposed Pretrial Order is due, plaintiff's counsel shall forward to defendant's counsel a draft of the pretrial order containing the information plaintiff proposes to include in the draft. Defendant's counsel shall, in turn, provide to plaintiff's counsel any comments on the plaintiff's draft as well as the information defendant proposes to include in the proposed pretrial order. Motions *in limine*: No party shall file more than ten (10) motions *in limine*. Briefs (**opening, answering and reply**) on all motions *in limine* shall be filed by **September 12, 2007**. Opening and answering briefs shall not exceed five (5) pages and reply briefs shall not exceed three (3) pages. The parties shall file with the court the joint proposed

final pretrial order with the information required by the form of Final Pretrial Order which accompanies this Scheduling Order on or before **September 22, 2007**.

8. **Trial**. This matter is scheduled for a **13-day** jury trial beginning at **9:00** a.m. on **October 9, 2007**.

9. **Scheduling**: The parties shall contact chambers, at (302) 573-6470, only in situations where scheduling relief is sought, and only then when ALL participating counsel is on the line for purposes of selecting a new date.

/s/ Gregory M. Sleet
UNITED STATES DISTRICT JUDGE